Juta Permai Sdn Bhd v Mohd Zain bin Jantan & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B–02–414 OF 1999
MOKHTAR SIDIN, HAIDAR AND ABDUL KADIR SULAIMAN JJCA
8 MARCH 2001

Civil Procedure *— Summary possession of land — Application for — Whether respondent entered into or remained in land without licence or consent of appellant or state authority — Whether appropriate for appellant to resort to O 89 to obtain possession — Whether state authority could be understood as giving consent or acquiescence to respondent to occupy land — Whether triable issue existed — Rules of the High Court 1980 O 89*

The appellant was the registered proprietor of certain lands. The appellant filed an originating summons against the respondents pursuant to O 89 of the Rules of the High Court 1980 ('the RHC'). The appellant claimed the respondents entered into or remained in occupation of the lands without its licence or consent or that of its predecessor in title, ie the state authority. The respondents took a preliminary objection to the procedure under O 89 of the RHC adopted by the appellant. It was submitted that they were not squatters simpliciter and whether they entered and occupied the lands with consent or acquiescence of the State Authority is a triable issue. The High Court judge agreed with the submission of the respondents. In addition thereto, the judge held that the appellant failed to comply with O 89 r 3(b) of the RHC as it failed to disclose the circumstances of the occupation of the lands by the respondents. The appellant appealed.

Held, dismissing the appeal:

(1) The court agreed with the High Court judge's conclusion that the letter from the Timbalan Menteri Besar of Selangor (exh A-3) was proof of the acquiescence/consent of the state authority to occupy the lands. Further, exh 6 showed that each of the respondents were confirmed to be allotted an area of 8000 sq ft at a cost of 50 cts per sq ft and the appellant to pay some form of compensation to the respondents for vacating the lands. The respondents had shown that they were not squatters simpliciter otherwise the state authority would have taken action against them under s 425(1) of the National Land Code 1965 (see pp 325G, 326B–D).

(2) There was substance on the allegation by the respondents of suppression of material facts by the appellant. The appellant merely stated that the respondents occupied the state land without the consent of the State Authority. The documentary evidence placed before the court below showed that the appellant was involved in the discussion with the respondents regarding, inter alia, compensation to be paid (see pp 326I–327A).

(3) The High Court judge was correct in his finding that on the material before him the respondents were not squatters

simpliciter and that there were triable issues. He was therefore right to rule that O 89 of the RHC was not the proper procedure when he dismissed the appellant's originating summons (see pp 327B).

[Bahasa Malaysia summary

Perayu merupakan pemilik berdaftar tanah-tanah tertentu. Perayu memfailkan satu saman pemula terhadap responden-responden menurut A 89 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'). Perayu menuntut bahawa responden-responden memasuki atau menetap di tanah-tanah tersebut tanpa kebenaran atau izinnya ataupun pendulunya dalam hakmilik tanah, iaitu pihak berkuasa negeri. Responden-responden mengemukakan bantahan awal terhadap prosedur di bawah A 89 KMT yang dipakai oleh perayu. Ia dihujahkan bahawa mereka bukan hanya penghuni setinggan dan sama ada mereka memasuki dan menetap di tanah-tanah tersebut dengan izin atau akuiesens pihak berkuasa negeri ialah satu perkara yang boleh dibicarakan. Hakim Mahkamah Tinggi bersetuju dengan hujahan responden-responden. Selain itu, hakim memutuskan bahawa perayu gagal mematuhi A 89 k 3(b) KMT kerana ia gagal mendedahkan hal keadaan penghunian tanah-tanah tersebut oleh responden-responden. Perayu tersebut merayu.

Diputuskan, menolak rayuan tersebut:

(1) Mahkamah bersetuju dengan kesimpulan hakim Mahkamah Tinggi bahawa surat dari Timbalan Menteri Besar Selangor (eks A-3) adalah bukti akuiesens/izin dari pihak berkuasa negeri untuk menghuni tanah-tanah tersebut. Selain itu, eks 6 menunjukkan bahawa setiap seorang dari para responden disahkan telah diberikan satu kawasan seluas 8000 kaki persegi bagi kos 50 sen setiap kaki persegi dan perayu mestilah memberi wang pampasan kepada responden-responden untuk mengosongi tanah-tanah tersebut. Responden-responden telah menunjukkan bahawa mereka bukan hanya penghuni setinggan, jika tidak pihak berkuasa negeri akan mengambil tindakan terhadap mereka di bawah s 425(1) Kanun Tanah Negara 1965 (lihat ms 325G, 326B–D).

(2) Terdapat kebenaran dalam dakwaan responden-responden mengenai penindasan fakta-fakta material oleh perayu. Perayu cuma menyatakan bahawa responden-responden menghuni tanah kerajaan negeri tanpa izin pihak berkuasa negeri. Keterangan dokumentari yang dikemukakan di hadapan mahkamah menunjukkan bahawa perayu terlibat dalam perbincangan dengan responden-responden berkenaan, antara lain, wang pampasan yang harus diberikan (lihat ms 326I–327A).

(3) Hakim tersebut betul dalam keputusannya bahawa berdasarkan keterangan di hadapannya, responden-responden bukan hanya

penghuni setinggan dan terdapatnya perkara-perkara yang boleh dibicarakan. Oleh itu, beliau bertindak betul dengan memutuskan bahawa A 89 KMT bukannya prosedur yang betul apabila beliau menolak saman pemula perayu (lihat ms 327B).]

Notes

For cases on summary possession of land, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4781–4793.

Cases referred to

Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 (refd)

Salim bin Ismail & lain-lain lwn Lebbey Sdn Bhd (No 2) [1997] MLJ 4 (refd)

Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor [1998] 4 MLJ 233 (refd)

Legislation referred to

National Land Code 1965 s 425(1)
Rules of the High Court 1980 O 89 r 3(b)

Appeal from: Civil Suit No MT1–24–995 of 1998 (High Court, Shah Alam)

Yeoh Cho Kheong (*Ling & Theng Book*) for the appellants.
Manjit Singh Saini (*Harun Idris Yeoh & Partners*) for the respondent.

Haidar JCA. (delivering judgment of the court): The appellant, as the plaintiff in the court below, filed an originating summons against the respondents pursuant to O 89 of the Rules of the High Court 1980 ('the RHC').

The appellant is the registered proprietor of the lands held under HS (D) 110365 to HS (D) 110464, PT No 34564 to PT No 34645, HS (D) 110465 to HS (D) 110564, PT No 34746 to PT No 34845, HS (D) 110565 to HS (D) 110664, PT No 34846 to PT No 34945, HS (D) 110665 to HS (D) 110764, PT No 34946 to PT No 35045, HS (D) 110765 to HS (D) 110864, PT No 34646 to PT No 34745, HS (D) 110865 to HS (D) 110898, PT No 35046 to PT No 35079, Mukim Sungai Buluh, Daerah Petaling, Negeri Selangor ('the said lands'). Order 89 of the RHC is a summary procedure which provides for the appellant to seek an order of the court to evict the respondents from the said lands. The appellant claimed that the respondents entered into or remained in occupation of the said lands without its licence or consent, or that of its predecessor in title, that is, the state authority. In other words, the appellant alleged that the respondents were squatters on the said lands.

At the hearing in the court below, the respondents took a preliminary objection to the procedure under O 89 of the RHC adopted by the appellant. They took the point that they were not squatters simpliciter and

whether they entered and occupied the said lands with the consent or acquiescence of the state authority is a triable issue. The learned judge agreed with the submission of counsel for the respondents. In addition thereto, the learned judge held that the appellant failed to comply with O 89 r 3(b) of the RHC as it failed to disclose the circumstances of the occupation of the said lands by the respondents without licence or consent, and in which its claim to possession arose, citing the Supreme Court case of *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 in support thereof. In the result, the learned judge upheld the respondent's preliminary objection, and the appellant's summary application under O 89 of the RHC was dismissed with costs.

The appellant appealed to this court. We dismissed the appeal with costs. We now proceed to give our reasons.

It is not disputed that the appellant is the registered proprietor of the said lands at the time the originating summons was filed. It is equally not disputed that the said lands were alienated to the appellant by the State Authority of Selangor.

The main issue before the court below was whether on the facts as disclosed in the affidavits and the relevant documents exhibited thereto, the respondents could properly be termed or described as squatters simpliciter. If it was so, then O 89 of the RHC was properly invoked by the appellant. However, if it was otherwise, that is, the respondents could not possibly be described as squatters simpliciter, and whether they occupied that said lands with the consent or acquiescence of the state authority is a triable issue, then O 89 of the RHC was not in the circumstances the right procedure (see *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor*).

The learned judge in ruling that O 89 of the RHC was not suitable in this case as the respondents occupied the said lands with the acquiescence/consent of the state authority relied on exhs 'A-3' and 'A-5' annexed to the respondent's affidavit in reply.

In respect of exh 'A-3', this is what the learned judge said:

> The said exh 'A-3' is a letter from the Timbalan Menteri Besar of Selangor who gave an undertaking that he would procure the said lands and transfer them to the defendants. This is not only proof of the acquiescence/consent of the state authority the original owner of the land, to occupy the same, but is also proof of an undertaking by a person no less than the Timbalan Menteri Besar of Selangor to procure the said lands for the defendants and the other occupants.

In respect of exh 'A-5', we quote what the learned judge said:

> In addition exh 'A-5' is a letter from the plaintiff themselves to the Pentadbir Tanah Petaling containing a undertaking by the plaintiff to pay compensation to the defendants in consideration of the defendants handing over the said land to the plaintiff for development. Further exh 'A-5' also clearly states the status of the defendants and refers to them clearly and unambiguously as 'Peneroka' which means 'settlers'.

The learned judge concluded that the respondents were not squatters, and it is settled law that O 89 of the RHC proceedings applied only to squatters simpliciter and this fact alone takes this case out of the provision of O 89 of the RHC proceedings.

We agreed with his conclusion.

Further, exh 'A–4', a letter from the Pentadbir Tanah Petaling showed that as far back as 1994, a paper on the alienation of the said lands to the respondents was prepared and submitted to the State Director of Land and Mines for the consideration of the state authority.

Exhibit 'A-6' is the result of the decision of the state authority in respect of the said lands where the settlers (including the respondents) were confirmed to be 120 as ascertained by the appellant and each of them was to be allotted an area of 8000 sq ft at a cost of 50 cts per sq ft and the appellant to pay some form of compensation to the settlers (including the respondents) for vacating the said lands before proceeding with the earthworks for the project.

All the above, in our view, would show that the respondents had shown that they were not squatters simpliciter, otherwise the state authority would have taken action against them under s 425(1) of the National Land Code 1965 and they could have been evicted under O 89 of RHC for being squatters simpliciter.

The facts of the present case are more or less similar to the case of *Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor* [1998] 4 MLJ 233, where the Federal Court in allowing the appeal held at p 245:

> Similarly in the present case, if the initial entry of the settlers on the land was unlawful, they had committed an offence under s 425 (1) of the National Land Code. They could also be evicted under O 89 for being squatters simpliciter. From the evidence, the State Government knew of their presence on the said land from December 1981. No action was taken to charge them under the National Land Code for illegally occupying the said land. No proceeding was taken to evict them under O 89. From January 1988, the Menteri Besar knew about the settlers. He approved the renovation of their surau. He knew that the settlers were provided with water supply, roads and a community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In our opinion, there is an arguable case that the settlers occupied the said land with the acquiescence of the State Authority.

This court, in *Salim bin Ismail & lain-lain lwn Lebbey Sdn Bhd (No 2)* [1997] MLJ 4 at p 9 succinctly stated:

> The summary procedure under O 89 is governed by the same principle as those under O 14 of the Rules of the High Court 1980. To entitle a defendant to a trial, all he needs to do is to show that there is a triable issue of law or fact. It is only in clear cases of trespass that a summary order can be made under O 89.

In respect of the non-compliance of O 89 r 3(b) of the RHC, the appellant merely stated that the respondents occupied the state land without the consent of the state authority. The documentary evidence placed before the

court below showed that the appellant was involved in the discussion with the respondents and others regarding, inter alia, compensation to be paid and who were entitled were narrowed down to 120 settlers (including the respondents) as ascertained by the appellant itself. In our view, there was substance on the allegation by the respondents of suppression of material facts by the appellant.

To conclude, the learned judge was correct in his finding that, on the material before him, the respondents were not squatters simpliciter and that there were triable issues. He was therefore right to rule that O 89 of the RHC was not the proper procedure when he dismissed that appellant's originating summons with costs.

In the circumstances, we dismissed the appeal with costs. We affirmed the order of the learned judge. We ordered the deposit to go to the respondents towards their taxed costs.

Appeal dismissed.

Reported by Jafisah Jaafar